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FISCAL IMPACT STATEMENT

LS 6076

BILL NUMBER: SB 24

NOTE PREPARED: Feb 3, 2009

BILL AMENDED: Feb 2, 2009

SUBJECT: DNA for Felony Arrestees.

FIRST AUTHOR: Sens. Zakas

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It requires all persons arrested for a felony after June 30, 2009, to submit a DNA sample.
- B. It provides for the expungement of a DNA sample taken from a person arrested for a felony if the person is acquitted of all charges, the person's conviction is reversed, or the case is dismissed.
- C. It makes technical corrections and conforming amendments.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) *Summary:* The Indiana State Police (ISP) will incur new expenses to analyze and maintain DNA samples and to expunge samples when a person is arrested and is later found not guilty. The cost to analyze and maintain these new DNA samples will be between \$1.4 M and \$3.4 M. (The lower end of this estimate will require a *one-time investment* of \$900,000, bringing the first year total to \$2.4M.) To expunge the samples of persons who were arrested and later found to be not guilty could require ISP to either add or reassign at least four clerical staff. If more staff are needed, the added cost could be \$160,000.

Background: Current law requires individuals convicted of a felony offense or conspiring to or attempting to commit a felony offense after June 30, 2005, to provide a DNA sample to the Department of Correction (DOC), the county sheriff, or the agency supervising the individual. This bill would also require any person arrested for a felony offense after June 30, 2009, to provide DNA samples.

Estimating the Added Samples: No statewide data exists concerning the number of arrests for felony offenses. Below, the total arrests for felony offenses is estimated based on the Uniform Crime Report (UCR), which is gathered by the Federal Bureau of Investigation, Indiana State Court Administrator court statistics, and 2006 DOC admissions data.

Estimated Felony Arrests in Indiana and Additional Samples							
	2003	2004	2005	2006	2007	Average	Minimum
Felony Arrests	208,042	215,441	229,883	170,293	215,449	207,822	170,293
Less: Guilty	64,493	66,787	71,264	52,791	66,789	64,425	52,791
Less: Prior Arrest	70,734	73,250	78,160	57,900	73,253	70,659	57,900
Est. Added Samples	72,815	75,404	80,459	59,602	75,407	72,737	59,602

The felony arrests in the table are from the UCR total arrests. The UCR only reports arrests for certain offenses, and not all Indiana law enforcement agencies report for the UCR.

However, these data overstate the number of individuals who will have to submit a DNA sample for two reasons:

- An individual may be arrested more than one time in a year.
- Individuals may be arrested who already have a DNA sample in the state DNA database.

In order to correct the number of arrests for overstatement, stand-in statistics were developed:

- An estimated 31% of all cases in a court of record are disposed by a guilty plea, admission, or by default based on Case Dispositions for All Cases in Courts of Record from the State Court Administrator between 2003 and 2007. This analysis assumes that these offenders, having been found guilty, would have to provide a DNA sample under current law.
- Based on 2006 DOC admission data, 34% of the offenders classified as new commitments had a prior Indiana commitment to a DOC facility. In this analysis, the percentage is applied to arrests to account for those who would have been previously arrested.

Estimating the Added Costs: There are two components to DNA sampling: collection and analysis. The ISP currently contracts DNA collection for between \$17.75 and \$18.75. Most analysis is completed for \$28.99 per sample. The ISP estimates it could do DNA collection and analysis in house with the purchase of additional equipment, a one-time cost of \$900,000. ISP in-house collection costs are estimated at \$5, and the cost of analysis is \$19 per sample.

The following table estimates the number of additional samples that will be collected for persons arrested and costs of collecting and analyzing the additional DNA samples. A cost range is estimated by applying a low and high number of samples that would be processed and multiplying by the a range of collection costs of between \$26 (\$5 mailing + \$19 kits and analysis + \$2 cost of instrumentation maintenance agreements) if all samples can be processed in house, and \$47.25 if all samples are outsourced for analysis (18.25 + \$29).

A one-time cost of \$900,000 for new instruments is included in the low costs.

Cost Range for Processing New Samples for Persons Who Are Arrested in First Year							
Range	DNA Samples Analyzed		Collection and Analysis Costs		Start-up Costs for New Instruments		Cost (In Millions)
Low	59,602	x	\$26.00	+	\$900,000	=	\$2.4
High	72,737	x	\$47.25	+	\$0	=	\$3.4

Expungement: Besides the costs for collection and analysis, the cost to expunge the record of DNA could increase. Under current law, an individual may request expungement if the conviction on which the authority for inclusion is based has been reversed or the case dismissed. The total number of arrests that would need to be expunged could be between 24,000 and 30,000 cases per year. The added number of cases that would need to be expunged could be between 95 and 120 each working day.

Annual Number of Arrests Expunged In a Year and New Staff Needed											
Estimated Arrests		Percent Found Not Guilty (1)		New Cases Expunged Each Year		Working Days Per Year		Cases Per Day		Cases Expunged / Day	Clerical Staff Needed
59,602	x	41%	=	24,437	÷	250	=	98	÷	25	4
72,737	x	41%	=	29,822	÷	250	=	119	÷	25	5

(1) Source: Bureau of Justice Statistics <http://www.ojp.usdoj.gov/bjs/cases.htm#publications>.

ISP reports that it currently expunges less than ten samples each year. The increased number of samples that will need to be expunged will likely require new clerical staff to implement this task. On average, ISP estimates that one clerical person can expunge between 25 and 30 samples per day. Consequently between three and four new clerical staff may be needed. On average, a clerical person in ISP is paid \$25,500 per year. Using this average, the added annual cost to ISP would be \$161,000.

Clerical Cost to Expunge DNA Samples												
Average Salary		Fringe Benefits		Blended Health Care		Deferred Comp		Average Cost		New Clerics		Added Costs for New Clerical Positions
\$25,500	x	1.1954	+	\$9,520	+	\$273	=	\$40,276	x	4	=	\$161,103

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Effect on Department of Correction: DOC currently collects DNA samples of first-time offenders when they

are committed to DOC facilities. Men are committed to the Reception Diagnostic Center, while women are committed to the Rockville Correctional Facility Intake Unit. This bill would reduce the responsibilities for staff at these two facilities.

DNA Samples: Currently, two DNA samples are sent to the State Police laboratory; one for analysis and one that is stored for future use if another crime is committed. The sample for analysis is sent to a vendor, but will eventually be analyzed in house when a new State Police laboratory is completed and fully staffed. Once the profile has been entered into the database, the sample is destroyed. The current procedure is to require the individual to provide a copy of the court order and then to check the court order with the court or the State Police for verification. It is estimated that there have been five records expunged.

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) Local law enforcement agencies would have to collect more samples. Mouth swabs are used to collect samples for DNA analysis. Local law enforcement agencies and either the Indiana State Police or a selected vendor will need to develop a method to ensure that these samples are exchanged in a timely manner without breaking the chain of custody.

The costs of prosecuting certain felonies may be reduced if more DNA samples are available. In one study, criminal defendants in Denver, CO, were more likely to plead to a more serious charge when DNA evidence is presented than when no DNA evidence is available. When more defendants accept plea bargains, the courts, prosecuting attorneys, and public defender agencies can avoid more expensive criminal trials. Fewer trials can mean reduced expenditures for jury expenses, expert witness fees, security costs, and overtime for court personnel.

Explanation of Local Revenues:

State Agencies Affected: Indiana State Police.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online, 2006; Ed Littlejohn, Elittlejohn@isp.IN.gov; Paul Misner, 317-921-5306; “Why Arestee DNA Legislation Can Save Indiana Taxpayers Over \$50 Million Per Year”, Jay Siegel Ph.D.

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